

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CINTEC INTERNATIONAL LTD.,
and CINTEC AMERICA INC.,

Plaintiffs/
Counterclaim-Defendants,

v.

JOHN HUMPHRIES PARKES,
(Tel. 011-44-131-444-0038)

Defendant/
Counterclaim-Plaintiff

)
)
)
) Civil Action 1:03CV02393 (RJL)
)

Judge Richard J. Leon

ANSWER (limited to U.S. Patents
5,719,350 and 6,302,026
in Counts I and II only),
AND
COUNTERCLAIMS

I, Defendant/Counterclaim-Plaintiff John Humphries Parkes (hereinafter "Parkes") hereby state my limited Answer and Counterclaims to the Complaint filed herein by Plaintiffs/Counterclaim-Defendants (hereinafter collectively "Cintec"), as follows, the paragraphs in this limited Answer corresponding to the numbered paragraphs of the Complaint herein.

EXHIBIT C

ANSWER (limited to U.S. Patents
5,719,350 and 6,302,026
In Counts I and II only)

1. Upon information and belief, admitted.
2. Upon information and belief, admitted.
3. Admitted.
4. Denied. Parkes does not own or control Barrett U.S.

Patent 4,836,079.

5. Denied.

Because Parkes does not own Barrett U.S. Patent 4,836,079, this Court does not have subject matter jurisdiction under 35 U.S.C. §293 in this case to render any judgment affecting that '079 patent. Nor is there any case or controversy between Cintec and Parkes under the '079 patent, and therefore this Court has no subject matter jurisdiction in this case under the Declaratory Judgments Act, 28 U.S.C. §§2201 and 2202 to render any judgment affecting that '079 patent.

Because Parkes has admitted that the only Cintec products presently known to Parkes, and upon information and belief which have been offered for sale in and/or imported into the United States, do not infringe either of Parkes' U.S. Patents 5,728,967 and 6,359,188, there is no case or controversy between Cintec

and Parkes under the '967 and '188 patents, and therefore this Court has no subject matter jurisdiction in this case under the Declaratory Judgments Act, 28 U.S.C. §§2201 and 2202 to render any judgment affecting the '967 and '188 patents.

See the motions to dismiss filed contemporaneously herewith.

With respect to Parkes' U.S. Patents 5,719,350 and 6,302,026 only, subject matter jurisdiction and venue are proper in this Court.

6. Denied. Parkes has committed no act of unfair competition giving rise to any claim by Cintec under 15 U.S.C. §1125(a)(1)(B), and the Complaint pleads no such claim upon which relief could be granted by this Court in this case.

See the motion to dismiss filed contemporaneously herewith.

7. Defendant Parkes admits that this Court has personal jurisdiction over him, pursuant to 35 U.S.C. §293.

8. Denied. See paragraph 6 above.

9. Upon information and belief, plaintiff Cintec International Ltd. manufactures products that are marketed under the trademark Waterwall. Otherwise, denied.

10. In July 2003 Parkes commenced proceedings against Cintec International Ltd. in a Scottish Court alleging that certain Waterwall devices infringe certain British patents owned by Parkes. A written allegation in that Scottish case alleged that Cintec was infringing Parkes' U.S. Patents 5,719,350 and 6,302,026 only. Otherwise, denied.

11. Denied.

12. Parkes has alleged and does allege that Cintec infringes each of Parkes' '350 and '026 U.S. patents. Otherwise, denied.

13. Cintec International brought proceedings in an English Court with respect to Parkes U.K. patents. Otherwise, denied.

14. In the English proceedings, Parkes alleged that Cintec International Ltd. infringed certain of Parkes' U.K. patents.

15. Denied.

16. Denied.

17. Denied. Parkes presently has insufficient information upon which to plead otherwise to this allegation.

18. Upon information and belief, Cintec has shown and offered for sale certain of its products in the United States.

Otherwise, Parkes has insufficient information upon which to plead further to these allegations, which are therefore denied.

19. See paragraph 12 above. Otherwise denied.

Limited ANSWER to Count I
(limited to U.S. Patents
5,719,250 and 6,302,026, only)

20. The entirety of the foregoing limited Answer, including all paragraphs 1-19, above, are incorporated herein as if fully again stated here.

21. An actual case and controversy exists between Cintec and Parkes with respect to Cintec's infringement of Parkes' '350 and '026 U.S. patents only. Otherwise, denied.

22. Parkes admits only that Cintec seeks a declaration of noninfringement with respect to the Parkes' '350 and '026 patents only. Otherwise, see paragraphs 4-22 above of this limited Answer.

ANSWER to Count II

23. The entirety of the foregoing limited Answer, including all paragraphs 1-22, above, are incorporated herein as if fully again stated here. And, Cintec does seek a declaration of invalidity of certain claims of Parkes U.S. Patent 6,302,026.

24. Denied.

25. Denied. See the '026 patent.

26. Denied. See the '026 patent claims.

27. Denied. See the '026 patent and the U.S. Patent and Trademark Office prosecution history thereof.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

Re: Count III

[See paragraph 6 above herein, and the motion to dismiss Count III filed contemporaneously herewith, which motion has been filed in lieu of an answer to Count III.]

Limited Answer to Paragraphs 1, 2, 5
and 7-9 of Cintec's Prayer (Complaint, p. 10)

Defendant Parkes hereby requests that this Honorable Court deny all of Cintec's requests for judgments, orders, awards and relief, and particularly those of paragraphs 1, 2, 5 and 7-9 of page 10 of the Complaint herein.

COUNTERCLAIMS

37. Counterclaim-Plaintiff John Humphries Parkes is a citizen of Scotland, residing at Redhall Mill, Colinton Dell, Edinburgh, EH14 1JF, Scotland.

38. Counterclaim-Plaintiff Parkes is the owner of U.S. Patents 5,719,350 and 6,302,026.

39. Upon information and belief, Counterclaim-Defendant Cintec International Ltd. is a company formed under the laws of England and Wales, having a principal place of business in Cintec House, 11 Gold Tops, Newport, South Wales, NP204PH, United Kingdom, is a plaintiff who filed the Complaint in this civil action, and does business in this judicial district.

40. Upon information and belief, Counterclaim-Defendant Cintec America Inc. is a Maryland corporation having a place of business at 4406 Connecticut Avenue, N.W., Suite 28, Washington,

D.C. 20015, and is a plaintiff who filed the Complaint in this civil action and who has a place of business and conducts business in this judicial district.

41. Upon information and belief, Counterclaim-Defendant Cintec International Ltd. does business in this judicial district and has imported into the United States and offered for sale in the United States, products which infringe Counterclaim-Plaintiff Parkes' U.S. Patents 5,719,350 and 6,302,026. On information and belief, Counterclaim-Defendant Cintec America Inc. has a place of business in this judicial district, does business in this judicial district and has offered for sale in the United States products which infringe Parkes' '350 and '026 U.S. patents. And, both Counterclaim-Defendants (collectively "Cintec") have invoked jurisdiction of this Court by filing the Complaint in this civil action. By all the foregoing acts, Counterclaim-Defendants have submitted themselves to the personal jurisdiction of this Court.

42. Venue is proper in this Court with respect to Counterclaim-Defendant Cintec International Ltd. pursuant to 28 U.S.C. §1391(d). Venue is also proper in this Court with

respect to both Counterclaim-Defendants under 28 U.S.C. §1391(a), (b) and/or (c).

43. This Court has jurisdiction over the subject matter of Counterclaim-Plaintiff Parkes' claims for patent infringement pursuant to 28 U.S.C. §1338(a).

44. Upon information and belief, Counterclaim-Defendants Cintec have offered for sale in the United States and/or imported into the United States products identified by the following Cintec trademarks:

BOMB BIN
BLAST BIN
WATERWALL (Earlier Version)
WATERWALL (Later Version)
ANTI-RAM BAG
NAVY BLAST BAG.

COUNTERCLAIM I
Infringement of Parkes U.S. Patent 5,719,350

45. The contents of paragraphs 37.-44., above, are hereby realleged and incorporated in this counterclaim.

46. Counterclaim-Plaintiff Parkes herein specifically alleges that Counterclaim-Defendants Cintec have, without authority from Parkes, infringed Parkes' U.S. Patent 5,719,350, and at least claim 10 of that patent, by offers for sale and/or

importation into the United States of the Cintec products known under the trademarks BOMB BIN, WATERWALL (Earlier Version), WATERWALL (Later Version), ANTI-RAM BAG, and NAVY BLAST BAG. Furthermore, Cintec's offers for sale and/or importation into the United States of the WATERWALL (Later Version) and NAVY BLAST BAG also have infringed at least claim 17 of the Parkes' '350 patent.

47. Upon information and belief, Counterclaim-Defendants Cintec have also long had actual knowledge of the Parkes' '350 patent, as well as actual knowledge of Cintec's infringement thereof, as well as receipt of notice from Parkes of Cintec's infringement thereof, so that Counterclaim-Defendants' infringement of the '350 patent is intentional and willful.

COUNTERCLAIM II
Infringement of Parkes U.S. Patent 6,302,026

48. The contents of paragraphs 37.-44., are hereby realleged and incorporated in this counterclaim.

49. Counterclaim Plaintiff Parkes herein specifically alleges that Counterclaim-Defendants Cintec have, without authority from Parkes, infringed Parkes' U.S. Patent 6,302,026, and at least claims 1-3 and 5-8 of that patent, by offer for

sale and/or importation into the United States of the Cintec product known under the trademark BLAST BIN.

50. Upon information and belief, Counterclaim-Defendants Cintec have also long had actual knowledge of the Parkes' '026 patent, as well as actual knowledge of Cintec's infringement thereof, as well as receipt of notice from Parkes of Cintec's infringement thereof, so that Counterclaim-Defendants' infringement of the '026 patent is intentional and willful.

* * * * *

Therefore, Counterclaim-Plaintiff Parkes respectfully prays that this Court grant the following relief in this civil action:

A. Entry of judgment for Parkes to the effect that Counterclaim-Defendants Cintec are and have been infringing the '350 and '026 patents by their offers for sale in the United States, importation into the United States, and any other demonstrated acts of infringement;

B. Entry of an injunction preliminarily during the pendency of this action and thereafter permanently enjoining Counterclaim-Defendants Cintec, their agents, officers, employees and attorneys and those persons in active concert or participation with them who receive actual notice of such

injunction, from any and all acts of infringement of the '350 and '026 patents;

C. Entry of judgment awarding Parkes its actual and punitive damages and lost profits resulting from Counterclaim-Defendants' infringement of the '350 and '026 patents, and awarding Parkes pre-judgment and post-judgment interest on such awards;

D. Entry of judgment finding Counterclaim-Defendants Cintec to have willfully infringed the '350 and '026 patents and trebling the award of compensatory damages to Parkes;

E. Find this case exceptional and award Parkes all his costs, attorneys fees and the like as prevailing party in this case pursuant to 35 U.S.C. §285; and

F. Enter judgment awarding Parkes such other and further relief as the Court may deem just and appropriate.

Date: 15 January 2004

JOHN HUMPHRIES PARKES



Defendant and
Counterclaim-Plaintiff

Redhall Mill
Colinton Dell
Edinburgh EH14 1JF
SCOTLAND
Tel/Fax: 01144-131-444-0038

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing ANSWER (limited to U.S. Patents 5,719,350 and 6,302,026 in Counts I and II only), and COUNTERCLAIMS was served by hand and by first class mail, adequate postage affixed, upon:

Tom M. Schaumberg, Esquire
Rodney R. Sweetland, III, Esquire
ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.
1200 Seventeenth Street, N.W., 5th Floor
Washington, D.C. 20036
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Attorneys for Plaintiffs

On this 15th day of January 2004.



John H. Parkes

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CINTEC INTERNATIONAL LTD.,
and CINTEC AMERICA INC.,

Plaintiffs/
Counterclaim-Defendants,

v.

JOHN HUMPHRIES PARKES,
(Tel. 011-44-131-444-0038)

Defendant/
Counterclaim-Plaintiff

Civil Action 1:03CV02393 (RJL)

Judge Richard J. Leon

MOTION TO DISMISS (IN PART)
WITH RESPECT TO U.S. PATENTS
5,728,967 AND 6,359,188.

THE MOTION

Defendant Parkes hereby moves under Rule 12(b)(1), Fed. R. Civ. P. to have Plaintiffs' Complaint dismissed insofar as it seeks a declaratory judgment of non-infringement by Plaintiffs Cintec of Parkes U.S. Patent Nos. 5,728,967 and 6,359,188.

Pursuant to local rule LCvR 7(m) a representative for me conferred with Plaintiffs Cintec's counsel who agrees that the only relevant Cintec products are those identified in this motion, which is filed to preserve my lack of subject matter jurisdiction assertion. In view of my promise herein, this motion should not be opposed.

STATEMENT OF POINTS AND AUTHORITIES

1. There Is No Infringement of
the '967 and '188 Patents

I, John H. Parkes, owner of U.S. Patents 5,728,967 and 6,359,188, have communicated to Plaintiffs Cintec's counsel that the only Cintec products presently known to me, which upon information and belief have been offered for sale in, or imported into the United States, do not infringe either of my U.S. Patents 5,728,967 and 6,359,188. The only such Cintec products of which I am aware, even after requesting from Cintec's counsel confirmation of the completeness of my knowledge, are Cintec products identified by the following trademarks:

BOMB BIN

BLAST BIN

WATERWALL (Earlier Version)

WATERWALL (Later Version)

ANTI-RAM BAG

NAVY BLAST BAG,

each of which is shown and/or described in the attached copies (Exhibit A) from Cintec's website.

I therefore have unconditionally agreed that I will not sue Cintec for infringement of any claim of either of my U.S. Patents 5,728,967 and 6,359,188 based upon the above-identified Cintec products as shown and described in Exhibit A hereto.

2. There Is No Case or Controversy Between
Cintec and Parkes About Infringement
of Parkes' '967 and '188 Patents.

My foregoing statement promising to assert neither of my U.S. Patents 5,728,967 and 6,359,188 against Plaintiffs Cintec with respect to any alleged past or present products identified and described in Exhibit A hereto, precludes the existence of any actual controversy between Cintec and Parkes under either of the '967 and '188 patents. Any alleged prior statements by or on behalf of Parkes, which statements Cintec alleges could have created some apprehension of suit against Cintec under either of my '967 and '188 patents have thus been affirmatively disavowed.

3. This Court Has No Subject Matter Jurisdiction
Under the Declaratory Judgments Act With
Respect to The Parkes '967 and '188 Patents.

"The existence of an actual controversy is an absolute predicate for declaratory judgment jurisdiction." Spectronics

Corp. v. H.B. Fuller Co. Inc., 940 F.2^d 631, 19 USPQ 2^d 1545, 1547 (Fed. Cir. 1991). And, "[a]n actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." Preiser v. Newkirk, 422 U.S. 395, 401 (1975) (quoting Steffel v. Thompson, 415 U.S. 452, 459 n.10 (1974))." Spectronics, 940 F.2^d at 63 ___, 19 USPQ 2^d at 1548. Also see Super Sack Mfg. Corp. v. Chase Packaging Corp., 57 F.3^d 1054, 35 USPQ 2^d 1139 (Fed. Cir. 1995).

In view of my above stated assurance to Cintec on the record before this Court, Cintec cannot demonstrate an objectively reasonable apprehension that it will face an infringement suit against its past or present products based on either of my '967 or '188 patents. Thus there is no extant actual controversy between Cintec and Parkes with respect to either of my '967 and '188 patents.

RELIEF REQUESTED

For all the foregoing reasons, the Cintec Complaint against Parkes, insofar as it relates to U.S. Patents 5,728,967 and 6,359,188, should be dismissed pursuant to Rule 12(b)(1), Fed. R. Civ. P., because there is no extant controversy between Cintec and Parkes with respect to those patents, and thus this Court does not have subject matter jurisdiction under the Declaratory Judgments Act. An appropriate proposed order to that effect is submitted herewith.

Date: 15 January 2004

Respectfully Submitted,

JOHN HUMPHRIES PARKES



Defendant and
Counterclaim-Plaintiff

Redhall Mill
Colinton Dell
Edinburgh EH14 1JF
SCOTLAND
Tel/Fax: 01144-131-444-0038

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing
MOTION TO DISMISS (IN PART) WITH RESPECT TO U.S. PATENTS
5,728,967 and 6,359,188 was served by hand and by first class
mail, adequate postage affixed, upon:

Tom M. Schaumberg, Esquire
Rodney R. Sweetland, III, Esquire
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Attorneys for Plaintiffs

on this 15th day of January 2004.



John H. Parkes